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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 KEITH D. JOHNSON,

12 Plaintiff,

13 v.

14 KELLY MASUDA, et al.,

15 Defendants.
16

No. 2:23-CV-2883-KJM-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to
18 42 U.S.C. § 1983. Pending before the Court is Plaintiff's motion the appointment of counsel.
19 See ECF No. 10.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the Court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. Plaintiff states that he is untrained in the law and requires the assistance of
10 counsel. See ECF No. 10. This is a typical circumstance for prisoner litigants and, thus, not an
11 exceptional circumstance warranting the appointment of counsel. Further, a review of the docket
12 reflects that Plaintiff is capable of presenting his claims, which are neither factually nor legally
13 complex, on his own. Finally, at this early stage of the proceedings before Plaintiff has filed a
14 first amended complaint as ordered, the Court cannot stay that Plaintiff has demonstrated any
15 particular likelihood of success on the merits.

16 By separate order, the Court will grant Plaintiff additional time to file an amended
17 complaint in compliance with the Court's January 19, 2024, order.

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for the
19 appointment of counsel, ECF No. 10, is DENIED.

20 **Dated: February 7, 2024**



21 DENNIS M. COTA
22 UNITED STATES MAGISTRATE JUDGE
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